Supreme Court, U.S.
FILED
NOV 22 2005
OFFICE OF THE CLERK

No. 04-1527

In The Supreme Court of the United States

S.D. WARREN COMPANY,

Petitioner,

vs.

MAINE DEPARTMENT OF ENVIRONMENTAL PROTECTION,

Respondent.

On Writ Of Certiorari To The Maine Supreme Judicial Court

BRIEF OF AMICUS CURIAE SALT RIVER PROJECT AGRICULTURAL IMPROVEMENT AND POWER DISTRICT IN SUPPORT OF PETITIONER

JOHN B. WELDON, JR.
(*Counsel of Record*)
LISA M. MCKNIGHT
SALMON, LEWIS & WELDON, P.L.C.
2850 East Camelback Road, #200
Phoenix, Arizona 85016
(602) 801-9060

Attorneys for Amicus Curiae Salt River Project Agricultural Improvement and Power District

November 22, 2005

COCKLE LAW BRIEF PRINTING CO (800) 225-6964
OR CALL COLLECT (402) 342-2831

TABLE OF CONTENTS

Page

TABLE OF CONTENTS i

INTEREST OF AMICUS CURIAE 1

SUMMARY OF ARGUMENT 3

ARGUMENT 4

I. A "DISCHARGE" UNDER SECTION 401 OF THE CWA REQUIRES AN "ADDITION" OF A SUBSTANCE INTO WATERS OF THE UNITED STATES 5

II. THE *MICCOSUKEE* TEST FOR DETERMING WHEN AN ADDTION HAS (OR HAS NOT) OCCURRED IS DISPOSITIVE OF THIS CASE 9

III. THE SJC DID NOT CORRECTLY APPLY THE DISCHARGE TEST 11

CONCLUSION 15

TABLE OF AUTHORITIES

Page

CASES

Alabama Rivers Alliance v. Federal Energy Regulatory Commission, 325 F.3d 290 (D.C. Cir. 2003) 4, 6, 7, 8, 10

Avoyelles Sportsmen's League, Inc. v. Marsh, 715 F.2d 897 (5th Cir. 1983) 12

Catskill Mountains Chapter of Trout Unlimited, Inc. v. New York, 273 F.3d 481 (2d Cir. 2001) 10, 11

Dubois v. United States Department of Agriculture, 102 F.3d 1273 (1st Cir. 1996) 12, 13

Greenfield Mills, Inc. v. Macklin, 361 F.3d 934 (7th Cir. 2004) 12

North Carolina v. Federal Energy Regulatory Commission, 112 F.3d 1175 (D.C. Cir. 1997) 4, 6, 7, 8, 10

PUD No. 1 of Jefferson County v. Washington Department of Ecology, 511 U.S. 700 (1994) 6

S.D. Warren Co. v. Maine Department of Environmental Protection, 868 A.2d 210 (Me. 2005) 4, 12

South Florida Water Management District v. Miccosukee, 541 U.S. 95 (2004) ..... *passim*

STATUTES

33 U.S.C. § 1311(a) 2

33 U.S.C. § 1341(a) 3

33 U.S.C. § 1341(a)(1) 5, 7

33 U.S.C. § 1342 2

33 U.S.C. § 1362(12) 5

33 U.S.C. § 1362(16) 5

TABLE OF AUTHORITIES – Continued

Page

Section 301(a) of the Clean Water Act 2

Section 401 of the Clean Water Act..... *passim*

Section 401(a) of the Clean Water Act 3, 4, 6, 7, 15

Section 401(a)(1) of the Clean Water Act..... 7

Section 402 of the Clean Water Act..... *passim*

Section 404 of the Clean Water Act..... 12

RULES

Rule 37.4, Rules of the Supreme Court of the United States..... 1

BRIEF OF AMICUS CURIAE SALT RIVER PROJECT AGRICULTURAL IMPROVEMENT AND POWER DISTRICT IN SUPPORT OF PETITIONER

INTEREST OF AMICUS CURIAE

Amicus curiae Salt River Project Agricultural Improvement and Power District (the "District"), a political subdivision of the State of Arizona, is the operator of the Salt River Federal Reclamation Project ("SRP"), one of the nation's oldest federal reclamation projects.[1] Pursuant to various contracts with the United States Secretary of the Interior, the District operates six dams and reservoirs located on the Salt and Verde Rivers in central Arizona, which impound runoff from a 13,000-square mile watershed. The water stored in these reservoirs is delivered via SRP canals, laterals and pipelines to municipal, industrial and agricultural water users in the Phoenix metropolitan area. In addition, the District operates numerous electrical generating, transmission and distribution facilities, which provide power to nearly 800,000 consumers in the Phoenix area, as well as other rural areas of the state.

Four of the six dams operated by the District are operated for hydropower generation, as well as water storage purposes. Hydropower accounts for only 1.2% of the power resources generated by the District; however, because hydropower is inexpensive to generate, it is a highly valued resource. Hydropower is generated when water stored behind SRP dams flows through a control

---

[1] Because the District is a political subdivision of the State of Arizona and this brief is sponsored by its authorized law officer, consent to file this brief was neither sought nor required under Rule 37.4, Rules of the Supreme Court of the United States.

gate at the base of the dam, passes through a turbine, and then flows through an outflow tunnel in the dam into the river downstream. No substances are added to the water passing through SRP's hydropower generation facilities.

At present, the District's hydropower generation activities are not subject to the state certification requirements of Section 401 of the Clean Water Act ("CWA"). Section 401 of the CWA applies only to activities for which a federal permit or license is required, which may result in any discharge into waters of the United States. The District is not required to obtain a permit from the Federal Energy Regulatory Commission ("FERC") for the operation of its hydropower dams, as these facilities are instead subject to the regulatory authority of the United States Bureau of Reclamation. Moreover, to date, no one has suggested that the District's hydropower operations may result in a "discharge" of a substance subject to regulation under any provision of the CWA. This case calls into question whether hydropower operations such as the District's, which are common throughout the United States, do, in fact, result in a "discharge," as that term is used in Section 401, as well as other sections of the CWA.[2] The District has a strong interest in obtaining a clear ruling from the Court that the passage of water through a hydropower dam does *not* result in a discharge under the CWA, where the water bodies above and below the dam

[2] For example, under Section 402 of the CWA, a National Pollution Discharge Elimination System ("NPDES") permit is required for the "discharge of a pollutant." 33 U.S.C. § 1342. Section 301(a) of the CWA provides that, in the absence of an NPDES permit, "the discharge of any pollutant by any person [is] unlawful." 33 U.S.C. § 1311(a).

are not meaningfully distinct and no other substance is added to the water during the hydrogeneration process.

SUMMARY OF ARGUMENT

The generation of hydropower through the Petitioner's dams is not an activity that may result in "any discharge," as that term is understood under Section 401(a) of the CWA, 33 U.S.C. § 1341(a). The Supreme Judicial Court of Maine ("SJC") erred in holding otherwise. An essential element of a "discharge" under the CWA is the addition of a substance or substances into navigable waters. In its recent decision in *South Florida Water Management Dist. v. Miccosukee*, 541 U.S. 95, 109 (2004), this Court held that the mere pumping of water from one part of a water body into another part of the same water body does not constitute an "addition" of pollutants into navigable waters for purposes of Section 402 of the CWA. In the absence of an "addition," this Court held that there could be no "discharge of pollutants" under Section 402.

This Court's construction of the term "addition" in *Miccosukee*, a Section 402 case, is equally applicable to this case, which arises in the context of Section 401. A "discharge" under Section 401 of the CWA can only occur if an "addition" of a substance or substances is made into navigable waters. An addition is, therefore, an essential component of a discharge for purposes of Section 401, as well as Section 402, of the CWA.

Applying this Court's construction of the term "addition" in *Miccosukee* to the facts of this case, it is clear that the Petitioner's operations do not result in an "addition" of a substance into the waters of the Presumpscot River. No

party disputes that the water entering the Petitioner's hydropower dams is part of the same water body as that to which it returns, and the SJC, in passing on the case, acknowledged that the Petitioner's operations do not "add" more water to the river. *S.D. Warren Co. v. Maine Dep't of Environmental Protection*, 868 A.2d 210, 216 (Me. 2005). There is also no evidence that any other substance or substances will be added to the water as a result of the hydrogeneration process. Based on these facts, there is no addition, and, consequently, no discharge, and the Petitioner's hydropower generation activities are not subject to state certification requirements under Section 401(a) of the CWA.

ARGUMENT

The controlling issue presented by this case concerns the meaning of the term "addition," which is an integral element of a "discharge," as that term is understood for purposes of applying Section 401 of the CWA. Relatively few court decisions have interpreted the terms "addition" and "discharge" in the context of Section 401.[3] While resolving the specific facts in issue, these cases have failed to provide broader guidance, much less definitive criteria, for determining whether a particular activity or class of activities does (or does not) constitute an "addition." By contrast, recent court decisions issued in the context of Section 402, including, most notably, this Court's decision

[3] *See Alabama Rivers Alliance v. Fed. Energy Regulatory Comm'n*, 325 F.3d 290, 299 (D.C. Cir. 2003); *North Carolina v. Fed. Energy Regulatory Comm'n*, 112 F.3d 1175, 1187 (D.C. Cir. 1997).

in *Miccosukee, supra*, provide better direction in interpreting the term "addition" and are dispositive of the issues in this case.

I. A "DISCHARGE" UNDER SECTION 401 OF THE CWA REQUIRES AN "ADDITION" OF A SUBSTANCE INTO WATERS OF THE UNITED STATES.

Under Section 401, a party seeking a federal permit or license to conduct an activity that "may result in any discharge into the navigable waters" must first obtain certification from the state in which the discharge will occur that the activity meets the respective state's water quality standards. 33 U.S.C. § 1341(a)(1). The CWA does not expressly define the term "discharge," but merely states that, when used without a qualifying term, a discharge "includes a discharge of a pollutant, and a discharge of pollutants." 33 U.S.C. § 1362(16). The term "discharge of a pollutant" is in turn defined as "(A) any *addition* of any pollutant to navigable waters from any point source, (B) any *addition* of any pollutant to the waters of the contiguous zone or the ocean from any point source other than a vessel or other floating craft." *Id.*; *see* 33 U.S.C. § 1362(12) (italics added).

Relying upon the statutory reference to an "addition," used in conjunction with the definition of the term "discharge of a pollutant," the United States Court of Appeals for the District of Columbia Circuit has twice concluded that an "addition" is an essential element of a "discharge"

under Section 401 of the CWA.[4] *See Alabama Rivers Alliance*, 325 F.3d at 299; *North Carolina*, 112 F.3d at 1187.

North Carolina was the first of the two decisions by the District of Columbia Circuit interpreting the term "discharge" for purposes of Section 401. *North Carolina* concerned the proposed amendment to an existing FERC license for a hydropower project operated within a lake on the Roanoke River. *North Carolina*, 112 F.3d at 1180. Under the amendment, water would be withdrawn from within the boundaries of the hydropower project for subsequent use by the City of Virginia Beach. *Id.* The withdrawals would result in a decrease in the amount of water passing through the hydropower project's dams. *Id.* at 1181. No water or any other substance would be added to the lake. *Id.* at 1187.

The court in *North Carolina* was called upon to decide whether the withdrawals proposed by the license amendment constituted a "discharge" within the meaning of Section 401(a), thereby triggering state certification

[4] No previous cases decided by this Court have construed whether the term "any discharge," as it is used in Section 401 of the CWA, includes the passage of water through hydropower facilities. In *PUD No. 1 of Jefferson County v. Washington Department of Ecology*, 511 U.S. 700 (1994), this Court considered the extent of a state's authority under Section 401 to impose water quality standards on federally permitted or licensed activities resulting in a discharge into navigable waters. The Court in *Jefferson County* did not decide whether the petitioners' construction and operation of a hydropower project would result in a discharge subject to Section 401 because the petitioners conceded at the outset that these activities would result in two possible discharges – one based on the release of dredge and fill material during the project's construction and the other resulting from the petitioners' hydropower operations. *Id.* at 711.

requirements. 33 U.S.C. § 1341(a)(1); *Id.* at 1185-86. The court held that "neither the withdrawal of the water from the Lake nor the reduction in the volume of water passing through the dam turbines 'results in a discharge' for purposes of Section 401(a)(1)." *Id.* at 1187.

Noting the absence of an express definition of the term "discharge," the court in *North Carolina* looked to the CWA's definition of "discharge of pollutants" for guidance. The court found that the meaning of the term "discharge of pollutants," used in the application of § 402 of the CWA, was "the nearest evidence we have of definitional intent by Congress" of the meaning of "discharge" in Section 401. *Id.* at 1187. Hence, as the term "discharge of pollutants" is defined to require an "addition," the court concluded that the term "any discharge" under Section 401 likewise requires an "addition." *Id.* at n.4. The proposed withdrawals of water from the lake, while altering the discharge from the project's turbines, did not constitute an addition of a substance or substances.[5] *Id.* at 1188. Accordingly, no "discharge" resulted for purposes of Section 401(a). *Id.*

Six years later, in *Alabama Rivers Alliance*, the District of Columbia Circuit again had occasion to interpret the meaning of the term "discharge," as it is used in Section 401(a) of the CWA. The dispute in *Alabama Rivers Alliance* also arose in connection with a utility company's application to amend the FERC license for the operation of its hydropower dam on the Tallapoosa River. The proposed amendment would allow the replacement of leaking

[5] The court reasoned that "the existence of certification rights under Section 401(a)(1) does not depend on whether a discharge is 'altered.'" *Id.* at 1188. Rather, the court found, the activity sought to be permitted or licensed must actually "result in" a discharge. *Id.*

turbine generators, thereby increasing the flow of water into the river below the dam. 325 F.3d at 293.

The court in *Alabama Rivers Alliance* considered whether this increase in water flows "resulted in a discharge" for purposes of Section 401. *Id.* at 298-99. The court began its analysis with the proposition that, "[r]elying on the definition of 'discharge of a pollutant' and 'discharge of pollutants,' we observed [in *North Carolina*] that 'the word 'discharge' contemplates the *addition*, not the withdrawal, of a substance or substances.'" *Id.* at 299. The court then found that the release of water at an increased rate from the turbines of the dam constituted an "addition" of a substance resulting in a discharge under Section 401. *Id.* at 300. In reaching this conclusion, the court failed to clearly identify what "substance" was being "added" to the river when water already present in the channel passed through the utility company's hydropower dam.

The holding in *Alabama Rivers Alliance* appears to rest superficially on the notion that the mere increase in the rate of releases through a hydropower dam is sufficient to constitute an addition, even when there is no meaningful distinction between the waters entering the dam and those subsequently released downstream. As discussed in the next section of this brief, that notion is at odds with other cases interpreting the term "addition," including this Court's recent decision in *Miccosukee*.

In summary, the decisions in *North Carolina* and *Alabama Rivers Alliance* rightly held that a "discharge" under Section 401 of the CWA requires an "addition" of a substance or substances into navigable waters. But the *North Carolina* and *Alabama Rivers* opinions provide few

parameters, much less a clearly articulated test, for determining whether a particular activity does (or does not) constitute an "addition" within the meaning of Section 401 of the CWA. This Court's recent decision in *Miccosukee*, decided in the context of Section 402, sheds greater light on these issues and is dispositive of the question presented in this case.

II. THE *MICCOSUKEE* TEST FOR DETERMINING WHEN AN ADDITION HAS (OR HAS NOT) OCCURRED IS DISPOSITIVE OF THIS CASE.

The petitioner in *Miccosukee* operated a pumping facility that transferred water from a canal into a wetlands area after traveling through a series of pumps and levees. 541 U.S. at 100-01. Respondents, Miccosukee Tribe of Indians and Friends of the Everglades, challenged the activity, alleging that an NPDES permit was required under Section 402 of the CWA because the pumping of the water from the canal into the wetland area constituted a discharge of pollutants through a point source. *Id.* Among other matters, this Court held that the mere pumping of water from one part of a water body into another part of the same water body does not constitute an "addition" of a pollutant; therefore, no "discharge" occurs for purposes of Section 402 of the CWA. *Id.* at 109. This Court also noted that the Tribe did not dispute that if the canal and wetland area were two parts of the same water body, there was no "addition." *Id.*

In its decision, this Court quoted with approval certain statements from a decision of the United States Court of Appeals for the Second Circuit interpreting the term "addition" in the context of Section 402: "If one takes

a ladle of soup from a pot, lifts it above the pot, and pours it back into the pot, one has not 'added' soup or anything else to the pot." *Id.* at 110 (*quoting Catskill Mountains Chapter of Trout Unlimited, Inc. v. New York*, 273 F.3d 481, 492 (2d Cir. 2001)). This Court then remanded the case and directed the district court to decide whether the canal and the wetland area were "meaningfully distinct water bodies."[6] *Id.* at 112. If not, this Court concluded that the petitioner's activity would not require an NPDES permit under Section 402 of the CWA. *Id.*

Although *Miccosukee* and *Trout Unlimited* were decided in the context of Section 402 of the CWA, the interpretation of the term "addition" rendered by these decisions is directly pertinent to the question presented in this case. The outcome of both cases hinged on the definition of "addition," which is an essential component of the term "discharge" under Section 401, as well as Section 402, of the CWA. *See Alabama Rivers Alliance*, 325 F.3d at 299; *North Carolina*, 112 F.3d at 1187.

---

[6] In adopting the "meaningfully distinct water bodies" test, this Court did not decide various differences among the parties and the district court regarding how the relationship between the canal and the wetland area should be assessed. This Court pointed out that while the Tribe's arguments focused on differences in the "biological or ecosystem characteristics" of the waters, the South Florida Management District emphasized "the close hydrological connection between the two." *Id.* at 110. Ignoring the suggestions of both parties, the district court below had determined that the waters in *Miccosukee* were distinct because the transfer of water from one water body to another "'would not occur naturally.'" *Id.* at 110-11 (quoting the decision of the district court). Rather than settling on particular criteria for determining whether waters are meaningfully distinct, this Court instructed the district court to allow further development of the record before again considering the question. *Id.* at 112.

Applying the guidance provided by *Miccosukee* and *Trout Unlimited*, there is no "addition" when water merely passes through a hydropower project in the Presumpscot River. The Petitioner's hydropower generation project consists of a temporary diversion of water from the river and the release of that water into the same water body downstream. The river is a singular body of water to which no other substances are added as a result of the hydrogeneration process. The mere fact that a dam bisects the upstream and downstream portions of the river does not transform these portions into "meaningfully distinct water bodies." The Petitioner's dams do not add any soup, or any other substance, to the proverbial pot. Under this Court's analysis in *Miccosukee*, which adopted the earlier statements of the Second Circuit in *Trout Unlimited*, the Petitioner's activities do not result in an "addition" or, consequently, a discharge, into the waters of the United States; therefore, no state certification under § 401 is required.

III. THE SJC DID NOT CORRECTLY APPLY THE DISCHARGE TEST.

Although the SJC correctly concluded that an "addition" is an essential component to a "discharge" under the CWA, it wrongly held that the Petitioner's operations result in an addition. The SJC conceded that "Warren is not adding more water to the river." 868 A.2d at 216. The SJC also made no finding that the waters flowing in the Presumpscot River upstream from the Petitioner's hydropower dams are "meaningfully distinct" from the waters flowing in the same river downstream from the dams. On these facts, the SJC should have concluded that the Petitioner's operations do not result in an "addition" or,

consequently, a "discharge" under Section 401. But the SJC went in a different direction, holding that because the Petitioner exercised "private control" over the waters of the Presumpscot River during the hydrogeneration process, the Petitioner's dam operations result in a *per se* discharge of a substance into navigable waters.

The SJC began its analysis by stating that "[w]hen a substance is removed from a navigable body of water and then redeposited into that same body of water it constitutes a discharge. . . ."[7] *Id.* at 215. The SJC then added:

> When "water leaves the domain of nature and is subject to private control rather than purely natural processes . . . it has lost its status as waters of the United States." [footnote omitted] *Dubois v. U.S. Department of Agriculture*, 102 F.3d 1273, 1297 (1st Cir. 1996). Because these waters have lost their status as *waters of the United States*, when they are redeposited into the natural course of the river it results in an addition to the *waters of the United States*.

Id. at 215-16. Applying its "private control" theory to the facts in *S.D. Warren*, the SJC held that "a discharge

---

[7] The SJC mistakenly relied on two cases to support its misguided conclusion that the mere removal and redeposit of water into the same water body constitutes an "addition." *Id.* at 215. *See Greenfield Mills, Inc. v. Macklin*, 361 F.3d 934, 949 (7th Cir. 2004); *Avoyelles Sportsmen's League, Inc. v. Marsh*, 715 F.2d 897, 923 (5th Cir. 1983). These cases address "dredge and fill" activities subject to Section 404 of the CWA, and, consequently, focus on the addition of some material to the watercourse, rather than simply a conveyance of water through a dam. These cases do not support the SJC's holding that the passage of water through a hydropower dam results in an "addition," because there is no "discharge" of material; rather, in this circumstance, water is merely moving through a dam for the purpose of generating hydropower.

results because Warren's dams remove the water of the river from its natural course, exercise private control over the water and then *add* the water back into the river." *Id.*

The new legal test introduced by the SJC does not stand on firm legal precedent; indeed, it is directly in conflict with this Court's decision in *Miccosukee*. Contrary to the SJC's holding, the *Miccosukee* decision makes clear that the mere removal and redeposit of water into the *same water body does not constitute an addition*, as that term is used in the CWA. The Court in *Miccosukee* did not address the issue of "private control" in its opinion, and instead focused on whether there is a meaningful distinction between the two bodies of water. But, clearly, there was private control over the water in *Miccosukee*, and this Court nevertheless held that there is no "addition" if the bodies of water are not meaningfully distinct.

In embracing the "private control" test, the SJC relied on a single decision of the United States Court of Appeals for the First Circuit. *See Dubois v. United States Dep't of Agric.*, 102 F.3d 1273 (1st Cir. 1996). But *Dubois* does not support the SJC's adoption of a *per se* "private control" rule for determining what constitutes an "addition" under the CWA.

In *Dubois*, the First Circuit considered whether the Forest Service violated the CWA by failing to obtain an NPDES permit for the transfer of water from a river to a pond by way of snowmaking pipes. *Id.* at 1296. The parties to the case all agreed that the water from the river contained "pollutants" within the meaning of the CWA. The court therefore considered whether there was an "addition" of pollutants to the pond when water from the river was transferred through the pipes into the pond. *Id.* The

court explicitly noted that the river and pond were not the same body of water, and that "the transfer of water or its contents from the East Branch [River] to Loon Pond would not occur naturally." *Id.* at 1297.

As part of its analysis, the court in *Dubois* did consider that the water would pass through "privately owned" pipes while traveling from the river to the pond and that, through this transmission, pollutants may be added to the pond. *Id.* Yet, the court did not rest its holding on the fact that an addition occurred because the water entered into private control. Rather, it used the notion of private control, in part, as evidence of the fact that the movement of water from the river to the pond was not a natural occurrence, but was made possible only by way of the snowmaking pipes. *Id.*

The controlling facts in *Dubois* are easily distinguishable from those in the present case. Unlike the clearly distinct water bodies at issue in *Dubois*, no one disputes that the water entering the Petitioner's hydropower dams is from the same water body as that into which it is subsequently released. Equally significant, the First Circuit decided *Dubois* before this Court's adoption of the "meaningfully distinct water bodies" test in *Miccosukee*. *Dubois* does not support the SJC's conclusion that the mere passage of Presumpscot River water through the Petitioner's dams constitutes an "addition" triggering state certification requirements under Section 401 of the CWA.

The well-reasoned analysis of this Court in *Miccosukee* stands in stark contrast to the SJC's half-baked application of a *per se* "private control" test for determining what constitutes an "addition" under the CWA. Adoption of the SJC's test would produce the illogical result

that waters of the same stream, bisected only by a dam, are nevertheless indescribably distinct. We urge this Court to reject the "private control" test in favor of the "meaningfully distinct water body" test adopted in *Miccosukee*.

CONCLUSION

The generation of hydropower through the Petitioner's dams does not result in a discharge of a substance into navigable waters for purposes of Section 401(a) of the CWA. An addition is an essential component of any discharge under Section 401. Applying the guidance of this Court in *Miccosukee*, it is clear that the Petitioner's hydropower operations do not constitute an "addition" of a substance resulting in a discharge into the waters of the Presumpscot River. The water entering the Petitioner's hydropower dams is part of the same water body as that to which it returns; further, as the SJC conceded, the Petitioner's operations do not "add" more water to river. There is also no evidence that any other substance or substances will be added to the water as a result of the hydrogeneration process. On these facts, there is no addition, and, consequently, no discharge, and thus, the Petitioner's hydropower generation activities are not subject to state certification requirements under Section 401(a) of the

CWA. Accordingly, SRP respectfully requests that this Court reverse the decision of the SJC.

Respectfully submitted,

JOHN B. WELDON, JR.
(*Counsel of Record*)
LISA M. MCKNIGHT

SALMON, LEWIS & WELDON, P.L.C.
2850 East Camelback Road, #200
Phoenix, Arizona 85016
(602) 801-9060

Attorneys for Amicus Curiae
Salt River Project Agricultural
Improvement and Power District

November 22, 2005